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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1206th MEETING

Held at Headquarters, New York,
on Monday, 22 March 1993, at 10.30 a.m.

Temporary Chairman: Mr. HOUSHMAND (Representative of the Secretary-General)

Chairman: Mr. ANDO

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The meeting was called to order at 11.05 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

1. The TEMPORARY CHAIRMAN declared open the forty-seventh session of the Human Rights Committee.

2. Speaking on behalf of the Secretary-General, he said that there had been several developments of special importance for human rights since the forty-sixth session of the Committee drew attention, in particular, to General Assembly resolutions 47/111 and 47/147. The first of those resolutions, on the effective implementation of international human rights instruments, requested that the study on possible long-term approaches to enhancing the effective operation of existing and prospective human rights treaty bodies be updated for submission to the Commission on Human Rights at its fiftieth session and that an interim report be presented to the General Assembly at its forty-eighth session and be made available to the World Conference on Human Rights in June 1993.

3. Resolution 47/147, on the situation of human rights in the territory of the former Yugoslavia, welcomed the Committee's consideration in November 1992 of the special reports from the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), Croatia and Bosnia and Herzegovina and noted with concern the Committee's comments on the human rights situation in those countries. In that connection, he drew attention to Security Council resolution 808 (1993) on the establishment of an international war crimes tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

4. The General Assembly had also adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, to which it had invited treaty bodies to give due regard within their mandates.

5. Members of the Third Committee had particularly commended the Human Rights Committee for its decision to adopt concluding comments on States' reports, reflecting the view of the Committee as a whole. The Committee's general comments on articles 7 and 10 of the Covenant had been welcomed and it had been urged to formulate comments on article 27 as well.

6. Turning to the forthcoming World Conference on Human Rights, the provisional agenda for the Conference had been approved by the General Assembly, and the Preparatory Committee for the Conference would be meeting shortly to take up, inter alia, the question of the final document and the outcome of the World Conference, taking into consideration the preparatory work and conclusions of the various regional and many satellite meetings. The Conference agenda included a general debate on the progress made in the field of human rights since the adoption of the Universal Declaration of Human Rights and on the identification of obstacles to further progress in that area. Other items concerned the relationship between development, democracy and the universal enjoyment of all human rights, keeping in view the interrelationship and indivisibility of economic, social, cultural, civil and political rights, and contemporary trends in and new challenges to the full realization of all human

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rights of women and men, including those of persons belonging to vulnerable groups.

7. The World Conference was expected to make recommendations for strengthening international cooperation in the field of human rights, ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues, enhancing the effectiveness of United Nations activities and mechanisms and securing the necessary financial and other resources for United Nations activities in the area of human rights. As the chairpersons of the treaty-monitoring bodies had been invited to represent their committees at the next meeting of the Preparatory Committee, he suggested that members of the Human Rights Committee should consider at their current session any further recommendations they might have regarding the preparatory process for the World Conference.

8. At its recently concluded forty-ninth session, the Commission on Human Rights had commended the Committee's decision to examine at short notice the human rights situation in the former Yugoslavia and had, by its resolution 1993/7, requested all United Nations bodies, including treaty bodies, to cooperate fully with the Special Rapporteur on the former Yugoslavia and to provide him on a continuing basis with all relevant information in their possession on the situation of human rights in the former Yugoslavia. In its resolution 1993/15 on the International Covenants, the Commission had commended the Committee's efforts to improve its methods of work and had urged States parties to the International Covenant on Civil and Political Rights, in implementing the provisions of that Covenant, to take due account of the Committee's concluding observations and to disseminate at the national level not only their reports to the Committee but also the summary records of the Committee's meetings at which those reports had been examined.

9. Reviewing the recent activities of other human rights treaty bodies and activities under the advisory services programme of the Centre for Human Rights, he recalled that, at its seventh session in December 1992, the Committee on Economic, Social and Cultural Rights had decided that, when it was unable to obtain additional information requested from States parties, it could, in certain special circumstances, request the State party concerned to accept a visiting mission, consisting of one or two members of the Committee, whose purpose would be to collect the necessary information and to provide a more comprehensive basis for the exercise of the Committee's functions, under the corresponding Covenant, relating to the provision of technical assistance and advisory services. That procedure had already been initiated in respect of two States parties. The Committee had also expressed strong support for an optional protocol to the International Covenant on Economic, Social and Cultural Rights allowing for the submission of communications in respect of some or all of the rights recognized in that Covenant.

10. At its third session in January 1993, the Committee on the Rights of the Child had considered reports from States parties for the first time and had drawn up lists of issues for discussion with State representatives. Both that Committee and the Committee on Economic, Social and Cultural Rights had decided to follow the example of the Human Rights Committee and to issue concluding

(The Temporary Chairman)

observations after the consideration of each report, reflecting the main points of the discussion and indicating issues that would require a specific follow-up.

11. He was pleased to report that the Committee on the Elimination of Racial Discrimination had been able to hold its spring session in early March 1993. The financial difficulties which had plagued that Committee since 1986, causing it to cancel or curtail a number of its sessions, appeared to be coming to an end. If the amendment to the funding provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, approved by the General Assembly at its forty-seventh session, was formally accepted by two thirds of the States parties, financing from the regular budget could begin with effect from the 1994-1995 biennium. The activities of the Committee against Torture were also expected, eventually, to be financed entirely from the regular budget of the United Nations.

12. Lastly, he informed the Committee that, under its advisory services activities, the Centre for Human Rights had recently organized or helped to organize several workshops and training courses. Among forthcoming activities planned by the Centre, he drew attention to a training course on human rights education in Burundi, a training course for police academy instructors and a workshop on human rights and conflict resolution between citizens and State organs in Romania, and a training course for judges and lawyers on the administration of justice in Albania.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE IN ACCORDANCE WITH ARTICLE 38 OF THE COVENANT

13. Mr. Aguilar, Mr. Bruni Celli, Ms. Evatt, Mr. Fodor, Mr. Francis, Mrs. Higgins, Mr. Lallah, Mr. Mavrommatis and Mr. Pocar solemnly undertook to discharge their duties as members of the Human Rights Committee impartially and conscientiously.

ELECTION OF THE CHAIRMAN AND OTHER OFFICERS OF THE COMMITTEE

14. Mr. POCAR nominated Mr. Ando for the office of Chairman, Mr. Dimitrijević, Mr. El-Shafei and Mr. Wennergren for the offices of Vice-Chairmen, and Mr. Aguilar for the office of Rapporteur. He observed that the nominations reflected the consensus of the Committee.

15. Mr. Ando was elected Chairman, Mr. Dimitrijević, Mr. El-Shafei and Mr. Wennergren were elected Vice-Chairmen, and Mr. Aguilar was elected Rapporteur by acclamation.

16. Mr. Ando took the Chair.

ADOPTION OF THE AGENDA (CCPR/C/85)

17. The agenda was adopted.

ORGANIZATIONAL AND OTHER MATTERS

18. The CHAIRMAN drew attention to the provisional programme of work distributed to the members of the Committee.

19. Mr. DIMITRIJEVIĆ observed that there seemed to be very little awareness among non-governmental organizations that the Committee had begun the practice of adopting formal comments on each report it considered. The Committee should consider ways of making those comments public as soon as possible after their adoption, for instance, in a press conference by the Chairman at the end of each session.

20. The CHAIRMAN pointed out that the Committee's comments were regularly made available in the CCPR/C/79 series, of which Adds.1 to 14 had been issued thus far, but said that further thought could be given to publicizing them more extensively.

21. Mr. SADI suggested that the Committee might adopt a practice, similar to that of the Committee on Economic, Social and Cultural Rights, of designating a visiting mission to the field when a State party's report was unsatisfactory or had not been submitted.

22. The CHAIRMAN said that that suggestion could be taken up at a later meeting, under the item on submission of reports by States parties.

23. After a procedural discussion in which Mr. DIMITRIJEVIĆ, Mr. SADI, Mrs. HIGGINS and Ms. CHANET took part, the CHAIRMAN said he took it that the Committee decided to adopt the proposed programme of work.

24. It was so decided.

25. The CHAIRMAN invited the Chairmen of the two Working Groups to report on the activities of their Groups prior to the current session of the Committee.

26. Mrs. HIGGINS, Chairman/Rapporteur of the Working Group on communications, listed the members of the Working Group and said that it had held seven meetings between 15 and 19 March 1993. The Working Group had adopted recommendations on six views, had recommended that 10 communications be declared inadmissible and had declared five communications admissible. A further three recommendations had not been examined because of time constraints. Perhaps that could be done during the current session.

27. Mr. AGUILAR, Chairman/Rapporteur of the Working Group on article 40 of the Covenant, listed the members of the Working Group and said that it had managed to schedule only three meetings, the first of which had had to be cancelled. The Group had adopted three lists of issues, on the Dominican Republic, Guinea and Uruguay. It had also dealt briefly with issues relating to the Committee's work in general and to the World Conference on Human Rights, but had decided that those issues should be taken up in the Committee itself.

28. The CHAIRMAN said that, in keeping with past practice, the provisional lists of issues adopted by the Working Group had been sent to representatives of the countries concerned.

Lists of issues to be taken up in connection with the consideration of the reports submitted by States parties in conformity with article 40 of the Covenant

Third periodic report of the Dominican Republic (CCPR/C/70/Add.3)

Section I

29. Ms. EVATT suggested that paragraph I (d) should read: "Where reciprocity does not apply, in what way are the rights of aliens restricted as compared with those enjoyed by Dominican citizens? In particular, what right of review is available before expulsion?".

30. Mr. LALLAH said that although Ms. Evatt's suggestion was a very good one, it was perhaps too late to amend the question and transmit it to the State party. He explained for the benefit of new members that the list of issues was not restrictive and that the Committee could ask any additional oral questions it chose, regarding not only the particular issues listed but also any that had not been listed.

31. Mr. PRADO-VALLEJO observed that there was no country in the world where aliens enjoyed political rights. He therefore suggested adding a phrase such as "with the exception of political rights" in paragraph I (d). If aliens were prevented from enjoying civil rights, however, that could be raised as an issue.

32. Mr. AGUILAR said that the purpose of Ms. Evatt's suggestion was simply to ascertain how the Covenant was applied to all people living in a country, irrespective of nationality and with the exception of political rights. He suggested that I (d) should read: "With the exception of political rights, are there any limitations to the rights of foreigners as compared to the rights of nationals of the Dominican Republic?".

33. The CHAIRMAN said he took it that the Committee wished to amend paragraph I (d) as proposed by Mr. Aguilar.

34. It was so decided.

35. Mr. SADI said that the way in which the principle of reciprocity was referred to in the list of issues appeared to give it validity as the basis for reviewing that particular issue. He would like it to be clear that that was not the way it should be regarded.

36. Ms. CHANET suggested that, in paragraph I (e), the word "improved" should be replaced by "changed" in order to maintain objectivity when referring to the situation of Haitian workers.

37. It was so decided.

38. Ms. CHANET said that in the second line of paragraph I (f) the word "stay" seemed inappropriate. She suggested that the phrase "retention of Haitian workers by force" in the fourth line should be replaced by "forced labour of Haitian workers".

39. It was so decided.

40. Mr. AGUILAR suggested that the word "stay" in the second line might be replaced by "retention".

41. Mr. WENNERGREN said that the workers were presumed to have come of their own free will. More neutral wording such as "presence" would therefore be preferable.

42. Mr. AGUILAR observed that the workers were, in actual fact, retained and their presence in the Dominican Republic was not neutral. Neutral wording did not therefore provide an accurate picture of their circumstances.

43. Mr. WENNERGREN said that it was for the representatives of the Dominican Republic to tell the Committee whether or not those workers were actually being retained, hence his preference for the word "presence".

44. Mr. AGUILAR said that the question was a follow-up to the Committee's consideration of the initial report of the Dominican Republic, during which the representatives of that country had never disputed the allegations that Haitian workers were being subjected to forced labour.

45. Mr. LALLAH suggested that, instead of engaging in a substantive debate on the list of issues, members might accept them as they stood and make additional inquiries orally when the reports of the States parties concerned were presented.

46. Mr. AGUILAR reiterated that he preferred the use of the term "retention" in the second line of paragraph I (f). However, Mr. Lallah's suggestion was useful and he was prepared to adopt the lists of issues as presented.

47. The CHAIRMAN suggested that paragraph I (g) should give specific case numbers.

48. It was so decided.

49. Section I, as orally amended, was adopted.

Sections II and III

50. Sections II and III were adopted.

Third periodic report of Uruguay (CCPR/C/64/Add.4)

Section I

51. Mr. HERNDL, referring to the first line of paragraph I (b), said that the Committee should be asking for the Government's reaction to members' comments, rather than its interpretation of those comments.

52. Mrs. HIGGINS suggested that paragraph I (b) might begin with the words: "Please explain what consideration the Government has given to Committee comments ...".

53. The CHAIRMAN said he took it that the Committee wished to amend paragraph I (b) as proposed by Mrs. Higgins.

54. It was so decided.

55. Section I, as orally amended, was adopted.

Sections II and III

56. Sections II and III were adopted.

Section IV

57. Mrs. HIGGINS, referring to paragraph IV (h), said that since nothing in the Covenant or in Committee jurisprudence called for minority group representation, the question should be amended to read "How many members of minority groups are members of Parliament?".

58. The CHAIRMAN said he took it that the Committee wished to amend paragraph IV (h) as proposed by Mrs. Higgins.

59. It was so decided.

60. Section IV, as orally amended, was adopted.

Second periodic report of Guinea (CCPR/C/57/Add.2)

Section I

61. Section I was adopted.

Section II

62. Ms. EVATT said that, in paragraph II (e), the Committee should be asking about investigations conducted, not just measures taken.

63. Mr. AGUILAR observed that paragraph 106 of the second periodic report of Guinea referred to the difficulties discussed. He assumed that the measures taken included investigations, but that point could be added.

64. The CHAIRMAN suggested that, in the third line, the words "to investigate and" should be added after "regard". He took it that the Committee agreed with that suggestion.

65. It was so decided.

66. Section II, as orally amended, was adopted.

Section III

67. Section III was adopted.

Section IV

68. Mrs. HIGGINS suggested that in the second line of paragraph IV (g), the words in parentheses should be replaced by "ethnic groups, religion and language and their proportion".

69. Mr. DIMITRIJEVIĆ suggested that in the final sentence of paragraph IV (g), the words "sporadic and short-lived outbreaks of mutual suspicion" should be replaced by "events".

70. The CHAIRMAN said he took it that the Committee wished to amend paragraph IV (g) as suggested by Mrs. Higgins and Mr. Dimitrijević.

71. It was so decided.

72. Section IV, as orally amended, was adopted.

The meeting rose at 1.10 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1207th MEETING

Held at Headquarters, New York,
on Monday, 22 March 1993, 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant

Draft general comment on article 18 of the Covenant

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Draft general comment on article 18 of the Covenant (CCPR/C/45/CRP.2)

1. The CHAIRMAN recalled that, at its previous session, the Committee had adopted paragraphs 1 to 5 of the draft general comment (CCPR/C/45/CRP.2) and that paragraph 6 had been shortened and combined with paragraph 5.

2. Mr. DIMITRIJEVIĆ said that the Committee might need to review the paragraphs it had already adopted in order to accommodate views subsequently expressed.

Paragraph 7

3. Mr. DIMITRIJEVIĆ said that paragraph 7 was concerned with the inherent limitations of freedom of belief, since freedom of conscience and religion was defined not only positively but also negatively in the Covenant. Article 20 prohibited incitement to war, discrimination, hatred, hostility and violence; that prohibition applied to article 18 and should therefore be mentioned. It was not a limitation that was permissible for States, but was an inherent limitation on freedom of religion. History had shown that that freedom could be abused, leading to massive violations of the rights of others, if it was not kept within the boundaries of article 20.

4. Paragraph 7, then, was a short paragraph which merely indicated the limits of the freedom set out in article 18 and referred to the Committee's general comment 11, on article 20. Some members had felt that the reference to "tolerance" was unnecessary, while others had maintained that it was essential: if persons professing their religion and other beliefs relied on the tolerance of others, they should also be expected to practise tolerance themselves.

5. Mrs. EVATT said that the first part of the first sentence could be deleted. Furthermore, the reference to article 20 should cite the actual text of the article.

6. Mr. SADI noted that the Committee sometimes tried to elaborate on the wording of the Covenant in order to interpret it.

7. The Committee should make a distinction between wars of aggression and wars of defence when referring to "incitement to war". "Discrimination" presumably referred to negative discrimination rather than positive discrimination or affirmative action. "Violence" could sometimes be a form of self-defence. The Committee had to take into account the multiple meanings of those terms.

8. Miss CHANET said that it was not clear why paragraph 7 referred to only one of the limitations mentioned in article 18. She agreed that the exact wording of article 20 should be used. The phrase "the principle of ideological and

(Miss Chanet)

religious tolerance" was somewhat curious; the word "tolerance" could stand alone, since ideology and religion were very different philosophical concepts.

9. Mr. WENNERGREN observed that article 20, paragraph 2, referred to advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence. However, incitement to national and racial hatred lay outside the scope of the general comment on article 18 and need not be mentioned. The paragraph should therefore be reworded to remain within the scope of article 18 as it encompassed article 20.

10. Mr. LALLAH said he felt that article 20 did act as a limitation on freedom of expression as understood in article 18. Paragraph 7 was somewhat lopsided, since it referred to only one kind of limitation, while other limitations under article 18, paragraph 3, were referred to in paragraphs 9 and 10 of the draft general comment. It might be sensible to combine those paragraphs.

11. A true freedom required respect and State action to ensure such respect. Mere tolerance was not enough. The Committee might therefore wish to refer to the "principle of respect for ideological and religious freedoms" at the beginning of the paragraph.

12. Mrs. HIGGINS agreed that paragraph 7, particularly the beginning, needed rewording. Logically, the paragraph ought to follow the comments on article 18, paragraph 3. The Committee should first deal with the limitations within article 18 itself and then go on to the question of whether there was an effective limitation that bore upon it from another article.

13. Mr. EL-SHAFEI said that paragraph 7 mixed a number of issues, and should be simplified. He agreed that the first sentence needed to be reworded: it was not clear what was meant by "the principle of ideological and religious tolerance" or by "similar messages".

14. Mr. MAVROMMATIS said that the reference to "tolerance" introduced a notion of condescension. The Committee should strengthen paragraph 7 by spelling out the duty of Governments to protect the freedom to believe or not to believe and to guarantee such rights and respect for people of all religions under the law.

15. Mrs. EVATT said she felt that the idea behind paragraph 7 was that the enjoyment of freedom of religion or belief was necessarily limited by the requirement to respect other people's right to that same freedom. Article 20 dealt with permissible limits on that freedom.

16. Mr. WENNERGREN said that article 20, paragraph 2, did not just set limits on the exercise of religious beliefs but also protected other religious beliefs so that they would not be jeopardized by one group of believers attacking another. In such cases protection was needed for the group under attack.

17. Mr. HERNDL suggested that the Committee might refer to the "idea" rather than the "principle" of ideological and religious tolerance. He would prefer to retain the rest of the first half of the first sentence. The Committee should

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also strictly adhere to the language of article 20, but should refer only to religious hatred and not establish a link between religious tolerance and freedom and incitement to war.

18. Mr. DIMITRIJEVIĆ said that the placement of paragraph 7 had been intended to indicate that the freedom enunciated in article 18 was inherently limited by the Covenant itself. There was a difference between that limitation, which was mandatory, and the limitations in article 18, paragraph 3, which were permissive, and meant that freedom of religion could vary in scope from one country to another. However, it would be possible to move paragraph 7 so that it followed paragraph 8.

19. The reference to "tolerance" referred to tolerance for the rights of others on the part of those who enjoyed the freedoms envisaged in article 18, rather than tolerance on the part of the State. If the word caused confusion, it might be better to avoid it and to replace it by wording similar to that suggested by Mrs. Higgins. The word "ideological" had been included to indicate that article 18 referred to matters of conscience as well as religious belief.

20. The Working Group had tried to depart from the wording of article 20 because that wording was not very clear without reference to the travaux préparatoires. The best solution might be to reproduce article 20 in full; the Committee would then have the authority of the wording of the Covenant. He would prefer not to limit the reference to article 20 to the question of religious beliefs, since such beliefs often included hatred not only of other religions but also of other peoples and races.

21. Mr. BRUNI CELLI said it was not clear that the limitations in article 18, paragraph 3, were merely permissive if they were deemed to be necessary to protect public safety and order. Under article 20, propaganda for war and advocacy of national, racial or religious hatred were prohibited by law.

22. Miss CHANET agreed that article 20 should be quoted in its entirety and noted that the word "limits" in paragraph 7 had caused some confusion. States had the freedom to decide whether or not to impose restrictions, but once they decided to do so, they were bound by the restrictions set out in article 18, paragraph 3. Under article 20, States were bound to enact laws to prevent any incitement to discrimination, hostility or violence. Thus the distinction to be made was between positive obligation and negative limitations. Perhaps those two ideas should be expressed in two separate paragraphs, as Mr. Dimitrijević had suggested, and follow paragraph 8.

23. Mrs. HIGGINS said that there was general agreement on the need to relocate the paragraph. In addition, new language was needed to reflect the mandatory nature of article 20, stressed by Mr. Dimitrijević and Mr. Bruni Celli, and its impact on article 18, paragraph 3, which set forth permissible limitations. She agreed with Mr. Dimitrijević that the reference to article 20 should not be limited to religious hatred, since such hatred was often linked to persons belonging to a particular national or racial group. Accordingly, she proposed that the paragraph should be revised to read: "Respect for the beliefs and religions of all persons is limited by the requirements of article 20. Any

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manifestation of religion or belief that is an advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. As stated by the Committee in general comment 11, it is the duty of States parties to enact laws to prohibit the advocacy of such beliefs or religious views."

24. Mr. DIMITRIJEVIĆ said that it would be incorrect to cite only those portions of article 20 the Committee considered appropriate; paragraph 1 of that article, on propaganda for war, should also be cited. To avoid unnecessary repetition the final sentence might read "As stated by the Committee in general comment 11, States are under the obligation to enact laws to that effect."

25. Mr. HERNDL expressed reservations about the use of the word "respect" in the first sentence: he wondered whether it was respect or freedom that was to be limited by the requirements of article 20.

26. Mrs. EVATT said that article 20 limited the requirement of respect for beliefs and religion of others rather than respect for beliefs and religions which was inherent in the enjoyment of that right.

27. Mr. SADI sought clarification of the term "respect" and the way in which it was limited by article 20. He also questioned the legal connotation of that term in the first sentence and suggested that the word "protection" should be inserted, so that the sentence read "respect and protection".

28. Mr. AGUILAR shared the doubts expressed by previous speakers regarding the use of the word "respect" in paragraph 7. He proposed that the first sentence should read "Respect for the beliefs and religions of others limits the freedom of conviction and religion as stated in article 18 and under the requirements of article 20." He agreed that paragraph 1 of article 20, regarding propaganda for war, should be reflected in the text.

29. Mr. LALLAH said that, since the wording of paragraph 7 had been changed and the word "tolerance" dropped, perhaps the word "respect" should also be dropped and the text reworded to read "The exercise of the right to freedom of religion and beliefs of all persons is limited."

30. Mr. POCAR said that article 20 did not limit the freedom of religion or belief but rather the freedom to manifest one's religion or beliefs. Article 20 fell within the scope of article 18, paragraph 3, which defined the limitations of the freedom to manifest religion or beliefs. The new paragraph 7 should immediately follow the paragraph on limitations.

31. Paragraph 1 of article 20 was more closely related to article 19, paragraph 2, and the freedom of expression than to the freedom of beliefs. Nevertheless, it could be included in the reference to article 20.

32. Mr. WENNERGREN said that the term "respect" was used in article 2 of the Covenant, which stipulated that States parties undertook to respect the rights recognized in that instrument. That did not mean, however, that States parties should respect those rights in an unlimited way, but simply to the extent required by the Covenant.

33. Miss CHANET said that under article 18, paragraph 3, a State had the option of limiting or not limiting the expression of religion, as long as public safety was not threatened. Article 20, however, imposed a specific obligation on the State not to authorize any appeal to hatred, especially religious hatred. Both stipulations needed to be included in the text proposed by Mrs. Higgins, which should be amended to read "Freedom of religion ..." rather than "Respect for the beliefs and religions ...". That freedom was subject to the obligations set out in article 20 and the limitations imposed under article 18, paragraph 3.

34. Mr. PRADO VALLEJO said that article 18 and article 20 were distinctly different. Article 18 set its own limitations regarding the freedom of thought, conscience and religion in paragraph 3. Article 20 had a different perspective and enumerated the State's obligations to prohibit by law propaganda for war and any advocacy of national, racial or religious hatred.

35. Mrs. EVATT said that when she had used the term "respect", she was referring to the individual's respect of the rights of other individuals rather than the State's respect for rights it was obligated to limit under article 20.

36. Mr. DIMITRIJEVIĆ said that the freedom referred to in article 18 was not only religious freedom, but represented a wider concept that included other beliefs. If it was decided that the word "respect" should be retained, it ought to mean respect for the religion of others and for their interests as well. He then proposed that paragraph 7 of the draft general comment should read: "Respect for the rights of others determines the limits of the freedoms set out in article 18. According to article 20, no manifestation of religion or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its general comment 11, States parties shall enact laws to prohibit such acts." "Such acts" should be used so as not to repeat the word "manifestations".

37. The CHAIRMAN said he took it that consensus had been reached on the basis of the proposal by Mr. Dimitrijević and that the revised text of paragraph 7 would be placed between existing paragraphs 8 and 9.

38. Paragraph 7 was provisionally adopted.

Paragraph 8

39. Mr. DIMITRIJEVIĆ said that paragraph 8 dealt with the liberty of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions, as set forth in article 18, paragraph 4, of the Covenant. That freedom was related to the guarantee of the freedom to teach a religion or belief stated in article 18, paragraph 1. The paragraph also reflected the Committee's view that compulsory education should not include indoctrination in a particular religion or belief, but that States parties were free to introduce in public schools subjects which dealt with religion in a neutral and objective way. Lastly, the paragraph invited States parties to report how they ensured that the religious and moral aspects of compulsory education did not reflect only the beliefs of dominant groups.

40. Mr. SADI proposed that the second sentence should be amended to read: "The Committee notes that compulsory education that is confined or limited to indoctrination in a particular religion or belief is inconsistent with article 18 (4) ...". The final sentence should also be amended; States parties should be invited to report how they ensured that compulsory education was conducted in a manner consistent with the general thrust of the paragraph.

41. Mrs. HIGGINS said that the scope of the paragraph might be broader than that of article 18, paragraph 4, which required States to have respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, but did not necessarily impose on States an obligation to provide such education; rather, it provided an opportunity for religious and moral teaching to be offered through the private sector.

42. Mr. NDIAYE said that the paragraph did not appear to have been drafted in accordance with the Committee's traditions. The provision, in the third sentence, that public-school instruction in religious subjects should be given in a neutral and objective way would be particularly difficult to implement as it was unclear how religion could be taught in a non-doctrinal manner. It might be better to state that religious education should not be compulsory and should not be imposed on children of different religious backgrounds. The final sentence also raised difficulties: in States where religious education was optional, it was unclear how those States could be required to ensure that such education did not inculcate exclusive moral precepts. States should be concerned with ensuring the right of schools to provide religious education, rather than with the manner in which it was provided.

43. Mr. LALLAH said that article 18, paragraph 4, did not impose on States any obligation to provide religious education. In his country, Mauritius, a general debate was taking place as to the secular character of the State and discrimination in the allocation of funds. Under the Optional Protocol to the Covenant, complaints had been made by parents who felt that the moral education provided by a school had been patterned too closely on a particular religious faith. Where school curricula included religious instruction, States should ensure that aid was not provided in a discriminatory manner.

44. Mr. MAVROMMATIS agreed with previous speakers that the paragraph, as drafted, might impose unrealistic obligations on States parties. States should be invited to report how they ensured that religious and moral education were provided in a manner consistent with the other principles of the Covenant.

45. Mr. PRADO VALLEJO said that the paragraph should be redrafted to take into account several basic principles. The first principle related to the right of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions. There were two kinds of compulsory education: that provided by State schools, and that provided by private schools. While the teaching of any religion was prohibited in State schools, it was possible that an official State religion might be taught. In such cases, parents who did not profess the official religion had the right to request that it not be taught to their children. Private schools,

(Mr. Prado Vallejo)

on the other hand, could provide religious instruction, while parents who enrolled their children in such schools had the right to request that they be exempt from such instruction.

46. Mr. AGUILAR said that the concept of compulsory education needed to be clarified. A distinction should be drawn between State and private education: while State schools must not promote the teaching of any particular religion, private schools could provide religious education if parents were willing to pay for it.

47. Mr. WENNERGREN said that the paragraph also raised the issue of freedom of religion for minors. Article 18, paragraph 2, stated that no one should be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice. The Committee's recognition, in the second sentence of paragraph 8, of the right of children themselves to adopt a religion or belief appeared to be in conflict with the liberty of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions.

48. Mrs. EVATT said that the concept reflected in the paragraph was simple and important, namely, that while States could not restrict individual liberties, they might undermine such liberties in other ways, for example, through the provision of compulsory education embodying a particular religion or belief. States must ensure that the content of their compulsory education respected the conviction of parents and guardians, especially those who did not believe in any religion. She wondered whether the paragraph should include a reference to article 27 of the Covenant, which protected the right of religious minorities to practise their religion.

49. Mr. BRUNI CELLI said that the linkage established in paragraph 8 between paragraphs 1 and 4 of article 18 was appropriate. The issue which required clarification, however, was whether article 18, paragraph 4, could be interpreted to mean that States had an obligation to establish a number of schools teaching different religions. It was unclear whether States were required only to respect freedom of religion, or whether they must also promote the teaching of religious beliefs in a non-discriminatory manner.

50. Mr. POCAR said that, in contrast to paragraph 1, paragraph 4 of article 18 did not speak of "rights" but of "liberties"; the two paragraphs therefore had different connotations. Moreover, there seemed to be a contradiction between the "rights" of the child, as set out in paragraph 2, and the "liberty" of parents, as set out in paragraph 4 of article 18. Perhaps paragraph 4 had been added to article 18 some time after the first three paragraphs without thorough consideration of the relationship between that paragraph and the preceding text. In order to strike a better balance between parental and children's rights, he suggested that paragraph 4 should be interpreted in a manner more consistent with evolving notions of the rights of the child, an approach that would be in accord with the Convention on that subject.

51. Mr. SADI suggested that the only aspect of article 18, paragraph 4, that needed to be considered was parents' freedom to control the religious education of their children.

52. Mrs. HIGGINS said that there was not a large discrepancy between the rights of minors and the rights of parents as reflected in the language of the two paragraphs, since most people ultimately chose their own religious convictions despite having been educated, at their parents' wishes, in religious schools. However, if other members of the Committee were having difficulty with the language of the two paragraphs, the following sentences might be inserted somewhere in the draft: "State education may include religious education, but parents or guardians may require that their children be exempted from such teaching. The State should ensure that private schools offering religious education also allow exemption from such teaching. States may not prohibit the establishment of private schools for the teaching of religions other than the majority religion of the State concerned, though they may require that general educational standards be met in the schools."

53. Mr. HERNDL endorsed Mrs. Higgins' proposed revisions, which were very thorough. Clearly, what was at issue in the Committee's discussion was the scope of religious education in schools.

54. Mr. DIMITRIJEVIĆ suggested that a sentence might be inserted between the first sentence of the current draft of paragraph 8 and Mrs. Higgins' proposed addition, stating that parents should be provided with a meaningful and affordable alternative if compulsory education included religious or moral instruction based on the tenets of a particular faith. That revision would protect parental liberties not just in theory, but in practice.

55. While he agreed with previous speakers who had emphasized the importance of the rights of children, he believed that those rights had already been enshrined in the current draft. However, as a compromise, language might be inserted to the effect that parents and guardians should give "due regard" to the right of the child not to be subject to coercion in his or her religious education. In addition, the Committee's discussion seemed to focus too much on the question of religious education, when the words "moral education" were equally a part of the text of article 18, paragraph 4. the experience of the education systems of the former socialist States showed that the imposition of non-religious value systems in the context of compulsory education could be no less coercive.

56. While the first sentence of paragraph 8 need not necessarily be eliminated, revisions were required to state more clearly the right of parents to organize alternative forms of religious education. Otherwise, paragraph 4 of article 18 would be reduced to its most primitive meaning: that if a parent was not happy with the religious aspect of a child's education in public school, then the child would be allowed to absent himself and receive teaching from his parents on those subjects. Parents were not normally qualified to provide such an education. Thus, while the revisions proposed by Mrs. Higgins were excellent, it might be advisable to insert a sentence indicating that parents did not have the right to exclude their children from particular lessons merely because they touched on religion in some way. Alternatively, the word "those" could be substituted for "parents and guardians" in the third sentence of paragraph 8, thereby broadening the reference to non-believers to include children.

57. Mr. SADI expressed reservations about the reference to parents' "due regard" for the rights of children in the context of the religious education of minors. He wondered whether the "due regard" standard could really be applied in the case of young children. After all, it would be difficult to prevent the coercion of a child six years of age, and it therefore seemed clear that article 18, paragraph 4, had been intended to give parents the freedom to control their children's religious education. If the draft comments were intended to be of a general nature, it would be difficult to address the practical problems that might arise in balancing the rights of children not to be subject to coercion and the freedom of parents to control the religious education of minors.

58. The CHAIRMAN suggested that Mrs. Higgins should redraft paragraph 8 to reflect the questions raised by the previous speaker.

The meeting rose at 6.10 p.m.

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Forty-seventh session

SUMMARY RECORD OF THE 1208TH MEETING

Held at Headquarters, New York
on Tuesday, 23 March 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of the Niger (CCPR/C/45/Add.4)

1. At the invitation of the Chairman, Mr. Abarry and Mrs. Maikarfi (Niger) took places at the Committee table.

2. Mr. ABARRY (Niger) said that his Government regretted that it had been unable to submit its report to the Committee when originally requested. In addition, the information contained in the report submitted in May 1991 required updating because of the recent changes in the country.

3. The democratization process in the Niger had begun in 1983 with the drafting of a National Charter and had continued with the drafting of a Constitution, adopted in 1989. Because of the aspirations of the people for greater freedom and democracy, however, that Constitution had been found inadequate. A National Conference had been convened in 1991, lasting three months, as a result of which a transitional Government, headed by an elected Prime Minister, and a High Council of the Republic had been established, and a time-table had been set for the development of democratic institutions. A new Constitution had been adopted by national referendum in December 1992. With the rejection of the single-party system, some 40 political parties had been formed. In the recent legislative elections, candidates from 12 of those parties had run for office. Eight parties had nominated candidates for the first round of the presidential elections, which had taken place on 27 February 1993 in complete freedom and transparency, in the presence of over 200 observers from the international community. The second round would take place on 27 March 1993.

4. In a little under two years, the Niger had thus created all the necessary conditions for establishing a true democracy and an environment favourable to the promotion and protection of the rights of individual citizens and of society as a whole. The preamble to the new Constitution of 1992 affirmed the will of the people of the Niger to establish a state of law based on the principles of pluralist democracy and human rights. Many of the principles set out in the Universal Declaration of Human Rights and in the African Charter of Human and Peoples' Rights of 1981 were reflected in the new Constitution. Because of the country's experience under a state of exception and in order to perpetuate the democratic system, the new Constitution made it a crime to attack the republican form of government. Moreover, the people had the right and the duty to defend the democratically established Government through civil disobedience. National sovereignty was vested in the people, and practices such as regionalism, ethnocentrism, nepotism, feudalism, unlawful enrichment, favouritism and corruption affecting that sovereignty were henceforth punishable by law.

5. The new Constitution guaranteed the rights of the individual by enshrining the principles of non-retroactivity, presumption of innocence and separation of powers. Torture and other cruel, inhuman or degrading treatment or punishment committed by agents of the State was punishable by law. Freedom of the press and freedom of association were guaranteed. Causing damage to the environment

(Mr. Abarry, Niger)

had also been made a crime. Lastly, the State was required to inform the population about the new Constitution and their human rights and fundamental freedoms.

6. The people of the Niger were determined to do their utmost in order for law and democracy to prevail in their country, but they also looked to the international community to support the irreversible process which they had undertaken.

7. Mr. NDIAYE said that, although regrettable, it was understandable that the Niger should have delayed in submitting its report to the Committee in view of its difficulties over the past few years. He welcomed what he hoped would be a fruitful dialogue with that country. The process of democratization in the Niger had begun as early as 1983 and the National Conference had resulted in decisions fundamental to the future of the country. The road to democracy had not been entirely smooth, but it was encouraging that, in the wake of legislative elections whose results had not been contested, the final phase of the presidential elections was soon to take place. In general, the situation appeared favourable to the enjoyment of human rights, although there were some problems such as the Tuareg rebellion.

8. The report submitted by the Government of the Niger was unsatisfactory because it contained too little information on the current situation. Following its consideration, it might be useful to request a supplementary report. It was unfortunate that the 1992 Constitution had not been made available to the Committee. Title I of the 1989 Constitution painted a picture of a unified society free from class conflict and enjoying ideal relations among ethnic groups. It was not entirely surprising that it had been superseded by a new Constitution embodying a more realistic view of the Niger's society, which was subject to a degree of tension and strife among the many groups making up the country. After many years of a single-party system, there were currently 40 political parties in existence, demonstrating that diversity of opinion did not preclude national solidarity.

9. The Committee wo ld welcome more specific information on the current situation with regard to political organization and the impact of human rights on everyday life. More details on the legal system, including such issues as the independence of the judiciary and the right to legal representation, were needed, as was information on cooperation between the National Conference and the State during the transition period. Although the Government of the Niger had a reputation for sound financial management, there had been reports of difficulties with the payment of wages during the transition. Reports had also been received concerning the Tuareg rebellion. He was interested to know what impact those events had had on the human rights situation.

10. With regard to freedom of the press, more information was needed on the relationship between the independent press and the State press and on access by individuals to State-run communications media. Since African markets were often too small for free press organs to be viable, such organs often received State subsidies; he wondered whether any such subsidies were provided in the Niger. He was interested to know what means were used to disseminate information to the

(Mr. Ndiaye)

population about the Constitution and human rights and what plans there were for reaching illiterate citizens.

11. More information was needed about relations among ethnic groups, any conflicts among such groups and their representation in the Government and the civil service.

12. Ms. CHANET noted that, in recent years, the Niger had initiated a process of democratization and consolidation of the rule of law. Its accession to the International Covenant on Civil and Political Rights in 1986 was one aspect of that process. Unfortunately the manner in which that country had discharged its obligations under the Covenant, particularly its reporting obligations under article 40, prevented the Committee from gauging the extent of the changes in that country and accurately assessing the Covenant's impact on the democratization process.

13. The initial report contained little specific information on the current situation in the Niger and its preparation did not conform to the Committee's guidelines. The preparation of reports provided an opportunity for States parties to discharge their obligations under the Covenant by appearing before the Committee, thereby ensuring that their efforts to promote democracy were enhanced by their cooperation with the Committee.

14. Much of the available information on institutional structures in the Niger had been provided by non-governmental organizations. She hoped that the reporting State would take advantage of the opportunity afforded it to supplement and clarify that information.

15. With respect to the new Constitution, the text of which had inexplicably not been made available to the Committee, it would be interesting to know what place international instruments, and the Covenant in particular, occupied within the Niger's legal system. She also wished to know whether enabling legislation was required to give effect to the rights recognized in the Covenant or whether the Covenant was applicable directly.

16. She would welcome a detailed list of the individual rights and fundamental freedoms enshrined in the new Constitution. The references to such rights in the 1989 Constitution had been noticeably vague.

17. With respect to the remedies provided for in article 2 of the Covenant, she would welcome additional information on the other remedies referred to in paragraph 13 of the report and on whether those remedies could be invoked directly before administrative and judicial organs. She also wished to know more about the organization of the judiciary and whether magistrates were subject to removal from office.

18. Turning to the subject of equality between men and women, information provided by non-governmental organizations indicated that women in the Niger had taken to the streets to protest the denial of equal rights with men. She wondered to what extent that information was true and whether the new Constitution contained any provisions to ensure such equality.

(Ms. Chanet)

19. She would welcome additional information on the special security zones reportedly established in certain parts of the country. She also wished to know whether any rights provided for in the Covenant had been suspended in those zones by virtue of article 4 and, if so, which ones.

20. With regard to articles 6 and 7 of the Covenant, the problems of enforced disappearances and arbitrary executions seemed to be major ones in the Niger. She wished to know why the Government of the Niger had failed to respond to the request by the Special Rapporteur on summary and arbitrary executions for information on any such cases. In a number of cases, including that of an army general who had publicly admitted his involvement in a massacre, army officers found guilty of human rights violations had been pardoned and reinstated in the name of national unity. In other cases, the Government had refused to investigate complaints of enforced disappearances or arbitrary executions. It would be useful to have a full account of the situation in that regard.

21. With reference to article 9 of the Covenant, she would welcome information on the Niger's legislation governing arbitrary arrest or detention, the length of such detention, and the procedural guarantees provided by law. Reports that one particular ethnic group, the Tuareg, was subject to unlawful arrest also needed clarification.

22. Lastly, the Niger should be more specific about the procedural guarantees that protected the rights provided for in article 14 of the Covenant. She would also welcome an explanation as to whether the current legislation criminalizing unlawful enrichment embodied a presumption of guilt, contrary to the provisions of article 14 (2) of the Covenant.

23. Mr. EL-SHAFEI expressed regret that the report did not conform to the Committee's guidelines for the preparation of initial reports and that it contained little real information on human rights issues, the nature of judicial guarantees and the country's Penal Code. It also failed to elaborate on the recent evolution of the country's political structure in the context of the new Constitution adopted in December 1992. It was clear, however, that the country's political system was founded on the preeminence of the National Movement for the Development of Society (MNSD), which determined national policy.

24. It was unclear whether the transition to a multi-party political system had led to greater popular participation in national decision-making, in conformity with article 25 of the Covenant. Indeed, it was unclear whether the transition to a multi-party system was even reflected in the new Constitution. While there was clearly increased participation in terms of electoral candidacies, it would be interesting to know whether the National Conference still existed or whether it had been abolished.

25. Despite the favourable developments of recent years, serious human rights violations continued. The National Assembly had undertaken to investigate and punish such violations; he wished to know whether the results of those investigations had been published and whether those responsible for violations had been brought to trial.

(Mr. El-Shafei)

26. On the question of discrimination against ethnic groups, particularly the Tuareg, the report should have indicated what measures were being taken to prevent discrimination on ethnic grounds, as provided for in, inter alia, articles 2 and 26 of the Covenant.

27. It seemed that inequality between men and women remained entrenched in law. It would be useful to have a full account from the Niger on the situation in that regard.

28. Mr. AGUILAR said that the presence of the representatives of the Niger was itself indicative of the developments taking place in that country in the field of human rights. The recent elections, while an important part of the democratization process, were only a first step.

29. The report itself contained little information on the real situation of the rights recognized by the Covenant. On the subject of judicial guarantees, for instance, paragraph 11 of the report simply mentioned two Acts without describing how they helped to strengthen respect for the provisions of the Covenant in the Niger. The Constitution was the legal framework within which the provisions of the Covenant should be implemented, and the Niger should indicate precisely what role the Covenant played within the legal framework of the State. It should also be more specific about the relationship between the Constitution and the National Charter. It would be useful to know which of the two instruments had precedence, and what the relationship was between both of them and the Covenant.

30. No information had been provided to the Committee on the state of emergency in the Niger; the Secretary-General had not even been informed as article 4 of the Covenant required. The Committee would appreciate additional information on that matter.

31. He would welcome further information on the relations between ethnic groups in the Niger and on whether the differences between them resulted in discrimination against any group.

32. It would be interesting to have a full account of the situation of women in the Niger. The press had reported a recent incident in which a number of women had been apprehended for wearing mini-skirts and, in the process, had been stripped naked in public. If the reports were true, such an act would constitute flagrant discrimination. He wondered what measures the Government was taking to prevent such discrimination.

33. Reports had also been received about extrajudicial killings and about torture and other cruel, inhuman or degrading punishment. The Special Rapporteurs on those issues had received no response from the Government of the Niger to their requests for information on those alleged violations. It appeared that few of those accused of such violations were brought to trial, and that those who were found guilty were pardoned and reinstated. Indeed, the army seemed to act with impunity. Further data on that problem should be made available to the Committee.

(Mr. Aguilar)

34. The report shed very little light on the workings of the legal system in the Niger. The actual situation there must be examined in the light of specific articles of the Covenant so that the Committee could offer its opinions and advice, thereby helping the Government of the Niger to take practical steps towards fulfilling its obligations under the Covenant.

35. Mr. MAVROMMATIS said that, while he welcomed the news concerning the holding of elections in the Niger, he regretted the omission from the report of detailed information on the new Constitution and its relationship to the provisions of the Covenant. A dialogue with the Committee on that subject would surely be useful to the Niger in its commendable efforts to promote political pluralism and democracy. Although it had acceded to the Covenant in 1986, few of the Covenant's provisions had been incorporated into the Niger's legislation. Provisions concerning discrimination, for instance, were limited to the area of equality between the sexes. The Niger should provide additional information on the extent to which the provisions of the Covenant had been incorporated into the new Constitution. The Committee needed basic information, including information on the environment in which civil and political rights were protected, the historical sequence of the efforts made to protect those rights, and the functioning of the organs and institutions concerned with the protection of those rights.

36. He questioned whether it was possible to hold elections under a state of emergency and in the face of a rebellion by one sector of the population. In that connection, the Niger should provide additional information on extrajudicial executions and illegal detentions, particularly of members of the Tuareg ethnic group which was engaged in a rebellion against the central Government. He wished to know whether investigations were continuing into the human rights violations committed as a consequence of that rebellion. If there were objective reasons for the Government's inability to guarantee the practical enjoyment of human rights and fundamental freedoms, such as economic problems or entrenched prejudices, then the Niger should state those reasons.

37. He doubted whether all the information required by the Committee could be provided during consideration of the initial report. He therefore urged the Niger to provide as much information as possible and to supplement that information in its second periodic report.

38. In terms of specific questions, he wished to know whether a state of emergency had ever been declared and, if so, why it had been declared and why the Secretary-General had not been notified.

39. Lastly, he would welcome information on the extent to which customary law had been brought into line with the provisions of the Covenant.

40. Mrs. HIGGINS said that it was gratifying to know that articles 11-14 and 18 of the new Constitution gave substance to the guarantee of human rights, but that members of the Committee needed to study the text in order to ascertain whether the formulation of those articles was consistent with the provisions of the Covenant.

(Mrs. Higgins)

41. In particular, she wished to know how the regime of exception and derogation was provided for in the new Constitution and whether the provisions of article 11 of the old Constitution, guaranteeing equality for all citizens without distinction as to origin, race, sex or religion, had been extended to include the other categories specified in the Covenant.

42. She asked whether the High Court of Justice set up under the transitional regime was still in existence and noted that the refusal of the new courts to allow appeals against criminal convictions was inconsistent with the requirements of the Covenant. In addition, she wished to know whether the State Security Court, reinstated in 1992, would continue to exist under the new Constitution, what had necessitated that separate category of court and in what way its provisions for the right to a fair trial differed from those of any other criminal court. She noted that, while the practice of granting pardons through the High Court might provide an additional mechanism for the exercise of justice, it did not necessarily contribute to guaranteeing freedom from torture.

43. Lastly, she requested information on any measures which the Government of the Niger planned to take to address the imbalance between the sexes in such areas as school attendance and literacy.

44. Mr. FODOR said that, while it was regrettable that the report of the Niger had been so delayed, it had also, in another sense, come too soon, since it had been issued one week before the adoption of the National Charter and two years before the adoption of the new Constitution. In that connection, he noted that the Niger had acceded to the Covenant and the Optional Protocol while it had still been under military rule. He doubted whether the provisions of the Covenant could have been implemented under those circumstances. He suggested that it would be more appropriate for States to establish the necessary conditions for compliance with the provisions of such instruments before acceding to them.

45. Noting that the report was excessively brief and failed to follow the Committee's guidelines, he requested further information, in particular, on the competence of the High Council of the Republic and its role in the constitutional system and on the court system in general, since the report made no reference to the High Court of Justice or the State Security Court. Information was also required on the difficulties, such as extreme poverty or the high rate of population growth, experienced by the Niger in implementing the provisions of the Covenant.

46. He wondered whether the allegations of extrajudicial executions or arbitrary arrests by the army and of disappearances, torture and cruel treatment had been investigated by the authorities and how the provisions of article 4 of the Covenant concerning emergency measures had been implemented: in particular, which provisions could be derogated from in a national emergency.

47. Further information, with statistics where appropriate, was required on the status of women and discriminatory social practices against them, and on the rights of the child, indicating what protection was provided for children and how the legal provisions regarding children were implemented in practice.

(Mr. Fodor)

48. With reference to article 17 of the Covenant, he asked whether searches without warrants were a widespread practice.

49. Noting the institution of a multi-party system in the Niger, he requested clarification of the legal provisions for the establishment of political parties. Lastly, he asked what measures the Government was taking to eliminate ignorance of individual rights in certain parts of the country.

50. Mr. PRADO VALLEJO said that political developments in the Niger had rendered the current dialogue particularly valuable. He regretted, therefore, that the report did not follow the Committee's guidelines and contained no information on the substance of human rights problems in that country. From other sources, the Committee knew that the Niger had experienced difficulties in complying with the Covenant and he hoped that a new report would be requested from its authorities enabling members to have a fuller discussion at a later stage.

51. The report merely summarized the country's legislative basis and gave no indication of how its laws worked in practice. While the situation of human rights appeared to have improved with the changes in the Government and the new constitutional arrangements, the inquiries into past violations remained a cause of concern, since not all violations were being investigated. He asked whether the new constitutional system established compensation for victims of serious violations, such as torture, arbitrary arrest and disappearance, noting that such compensation would demonstrate the country's new willingness to comply with its obligations under the Covenant.

52. Noting that the Niger had a large prison population, he pointed out that under its laws provisional detention could only be applied for 24 hours, while in practice prisoners were held without trial for months on end. He wondered what steps were being taken to remedy that situation.

53. Welcoming the introduction of a multi-party system in the Niger, he requested further information on its legal basis and, in particular, clarification of the word "provisionally" in paragraph 19 of the report, which stated that some 15 political parties had been provisionally authorized. In addition, he asked whether there were any political detainees in the country and what steps had been taken to ensure their release and to investigate possible disappearances. Information was also needed on the instructions given to police regarding the use of firearms and whether respect for the United Nations standards on the use of firearms was being promoted, to prevent any repetition of past abuses.

54. Information received by the Committee indicated the persistence of discriminatory practices against women, including the use of violence by the police and in the home, and he wondered what steps were being taken to eliminate such practices. While the legislation of the Niger prohibited the marriage of girls below the age of 14, there was evidence of marriages of girls as young as 10 years old and he asked what steps were being taken to eradicate that practice. Noting the severe imbalance between the sexes in the area of

(Mr. Prado Vallejo)

education and literacy, he asked what corrective plans were being implemented by the authorities. Lastly, information was required on the measures taken to guarantee the independence of judges under the new constitutional rules.

55. Mr. SADI said that the report from the Niger was too concise for the Committee's purposes, but constituted a valuable initial contact with that country. Points of detail would have to be addressed at a later stage in the light of supplementary information.

56. In general terms, he wondered whether the Government of the Niger was aware of the Committee's guidelines for the preparation of reports. He hoped that those guidelines would assist the authorities in their preparation of subsequent reports. In addition, he asked how extensive political awareness of the Covenant was in the Niger, noting that many countries, especially those in the developing world, ratified human rights instruments but omitted to promote awareness of those instruments among their populations.

57. Mr. WENNERGREN drew attention to the provisions of article 6 of the Covenant, on the death sentence, and regretted the omission of any information on executions from the Niger's report. It was his understanding that many death sentences had been carried out in that country in past years and he requested more specific statistics, particularly for the period 1991-1992. He also wished to know whether the provisions of article 6, paragraph 5, prohibiting the death sentence for persons under 18 were respected in the Niger.

58. With regard to the provisions of article 8 of the Covenant, on forced labour, the report was similarly unforthcoming, and the Committee had to rely on reports from non-governmental organizations and other sources alleging that slavery still existed among the Tuareg people, where fair-skinned Tuaregs took those with dark skins as slaves. He wondered what steps were being taken to eliminate that unacceptable practice.

59. Further information was required on the commission of inquiry into political crimes and abuses, established in 1991, and on whether a new Commission would be set up to investigate violations which had occurred during the 1991-1992 transitional period, such as those allegedly committed by certain groups in the army.

60. Turning to the judiciary, he asked how its independence was guaranteed, how and by whom judges were appointed, for what tenure and what status they enjoyed in the Niger. Further information was also required on the status, composition, competence and other aspects of the State Security Court, whether it permitted recourse to appeals and, if so, to which instances such appeals would be referred.

61. Noting that violations of privacy, the family and the home, including searches without warrant and illegal searches were inevitable in times of tumult such as those through which the Niger was living, he asked whether a commission of inquiry would be set up to investigate such violations.

62. Sharing the concerns of other members about discriminatory practices against women, he drew attention, in particular, to reports from other sources

(Mr. Wennergren)

about the continued practice of keeping women cloistered in some regions, and sought further clarification from the representatives of the Niger on that matter. In addition, he noted with concern the low levels of literacy and school attendance among children, particularly girls, who were kept out of school to provide labour. He wondered what steps the authorities were taking to eliminate that unacceptable practice and to improve the situation of children in the country.

63. Ms. EVATT said she shared the concern expressed by previous speakers about past abuses of human rights and hoped that the representatives of the Niger would be able to inform the Committee about the findings of the commission of inquiry into political crimes and abuses which were supposed to have been published in early 1993. She wished to know whether the Niger had implemented its proposal, mentioned in its report to the Committee on the Elimination of Racial Discrimination, to introduce human rights education in the country, and whether the proposal extended to law enforcement officials and included instructions for dealing with civil disorder and unrest. The representatives of the Niger could also tell the Committee whether the Government's report to the Committee had been published in the country, whether the people of the Niger had been consulted about the preparation of the report, whether any human rights or civil liberties organizations had been established and whether non-governmental human rights organizations, if they existed, had been involved in drafting the Constitution and in preparing the report to the Committee.

64. The Committee needed further details on the operation of the remedies for breaches of civil and political rights outlined in paragraph 12 of the report and on the kinds of decisions made by the courts in those matters. It would also be useful to have some information on the availability of legal advice and legal aid for people seeking a remedy for the violation of their rights.

65. With respect to the status of women, she inquired whether there had been any women members of the National Conference, whether any women had been elected in the recent parliamentary elections and whether there were any women on the judiciary. She would also appreciate it if the Niger could confirm that women had in fact been demonstrating for their rights as citizens, and could indicate what their complaints had been. What plans did the Government have to investigate and change the marriage, divorce, inheritance and other laws which discriminated against women? The Government should inform the Committee of any measures it had taken to deal with the practice of female circumcision. She also wondered whether the Government had set up any agency to work for the equal status of men and women in the country and hence deal with violence against women.

66. Since the new Constitution was very clear about the right to freedom from torture, it would be useful to know whether there was a specific agency responsible for investigating and recording every allegation of torture of detainees. She would also appreciate further information on the underlying social problem addressed by Act No. 61-27 mentioned in paragraph 11 (b) of the report, which seemed to suggest that slavery was a continuing social problem.

67. The Committee would in due course require detailed information about the separation of powers mentioned in the Constitution and about the way in which

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each branch of Government would be made responsible for its own sphere of activity. She would appreciate any information on whether private non-governmental organizations were able to publish and distribute newsletters about the human rights situation in the country and on whether community organizations had access to public broadcasting on radio or television or whether that was the exclusive domain of the Government. She wondered whether the representative of the Niger could share with the Committee any plans their Government had made to ensure that child labour did not interfere with the education of boys and girls and that girls enjoyed the same access to schooling as boys.

68. It would be useful to know whether political parties were formed on the basis of ethnicity or language, what kinds of issues divided parties and whether minorities were represented by their own political parties.

69. Mr. FRANCIS said that all Government agencies must be committed to the proper implementation of the obligations assumed by the Niger under the Covenant. Legal aid was a very crucial factor, since it enabled poor people to pursue their rights through the courts or through existing administrative machinery who might otherwise be unable to do so. The Niger might consider instituting an ombudsman for dealing with complaints emanating from public offices or concerning the functioning of administrative machinery, or for handling complaints of police brutality.

70. Turning to prisons or correctional facilities, he wondered whether the Niger had any specific agencies for investigating complaints from prisoners awaiting trial or convicted prisoners. He hoped that the authorities of the Niger would be able to respond to the issues raised by the Committee either during the current year or shortly thereafter.

71. Mr. POCAR said that it was unclear whether the provisions of the new Constitution concerning the status of international treaties were the same as those of the 1989 Constitution. He would appreciate more information on the place occupied by the Covenant in the Niger's legal system and wondered whether the Government of the Niger could confirm his interpretation of article 103 of the 1989 Constitution to the effect that the Covenant took precedence over domestic law and applied directly. He also wished to know what status the Covenant enjoyed in relation to the Constitution, since article 13 of the 1989 Constitution simply listed the different rights and liberties of the citizen without describing or defining them, while the provisions of the Covenant actually supplemented article 13, in that they mentioned a number of rights which were not listed in that article.

72. Even if he was correct in his assumption that the Covenant applied directly, that was not enough to ensure its implementation in every situation. Some provisions of the Covenant required enabling measures as article 2 of the Covenant itself indicated. More information was therefore needed on the measures taken to give effect to the rights recognized in the Covenant, particularly measures guaranteeing the possibility of effective remedies as required by article 2, paragraph 3, of the Covenant. Paragraph 12 of the report referred to "a whole range of remedies" but provided very little information on them. He would therefore appreciate further details of the "other measures for

(Mr. Pocar)

the protection of citizens that strengthen the arsenal of the law" referred to in paragraph 13 of the report, in order to gain a fuller picture of the legal framework within which the Covenant was being applied. Lastly, he was curious to know why no communications had been received from the Niger under the Optional Protocol. Was that because the general public were unaware of the international remedies available under that instrument?

73. Mr. LALLAH suggested that when the representatives of the Niger provided supplementary information, they should give some thought to a core document. He would like to know more about the people, resources and history of the Niger in order to gain a better understanding not only of the present situation but also of the legal framework within which human rights were protected.

74. With respect to the measures taken to implement article 25 of the Covenant, it had been noted that the Niger had inherited from colonial times a system designed for a homogeneous people, when, like many other third world countries that had achieved independence in the twentieth century, it in fact had many ethnic and religious groups. The Committee would appreciate additional information on not only legal measures taken but also how they worked in practice, in order to see how room was made for all the ethnic groups in society to enjoy their rights under article 25 of the Covenant.

75. Mr. HERNDL noted that, although the Niger had ratified the Covenant in 1986, its report had been submitted only in 1991 and was in any case not in conformity with the Committee's guidelines, lacking the information necessary for a thorough discussion in accordance with the provisions of article 40 of the Covenant. The Niger was currently evolving towards democracy and full respect for human rights and he hoped, therefore, that it would approach the United Nations and the Centre for Human Rights for assistance in the drafting of subsequent reports and human rights instruments. Noting that the second report of the Niger had been due in 1992, he hoped that it would be a full report, in line with the Committee's guidelines, and would include copies of the Constitution and other relevant documents. It was essential that the people of the Niger be fully acquainted with the Covenant and the Optional Protocol, and he therefore urged the Government to ensure wide dissemination of the Covenant and to inform the population about their rights so that they could use the remedies available to them under both national and international law.

76. Mr. ABARRY (Niger), reaffirming his country's determination to continue along its chosen path and to cooperate in every way with the Committee, said that his authorities would take the Committee's criticisms into account, particularly those regarding the drafting of the report, which clearly had many shortcomings. He hoped that the lack of information would be remedied by his country's new report. In the meantime, he would endeavour to respond as fully as possible to the specific questions put by members of the Committee.

The meeting rose at 1.10 p.m.